

20 December 2022

Director
Beneficial Ownership and Transparency Unit
Market Conduct Division
The Treasury

Via email: BeneficialOwnership@treasury.gov.au

Dear Director

Multinational tax integrity: Public Beneficial Ownership Register Consultation Paper

COBA appreciates the opportunity to provide feedback to Treasury on its *Multinational tax integrity: Public Beneficial Ownership Register Consultation Paper*.

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has over \$160 billion in assets, around 10% of the household deposit market and around five million customers. Customer owned banking institutions account for around two-thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs).

Our submission includes an attachment addressing some questions raised by Treasury in the Consultation Paper. We address three issues in more detail below:

- Application of the register to mutual ADIs.
- Anti-money laundering impacts.
- Phased implementation of the register and associated costs.

Application of the register to mutual ADIs

COBA generally supports increasing the ownership transparency of opaque legal vehicles and corporate structures so that it helps to create public certainty and confidence in who is controlling business and investment entities. We note the stated intention of the register to apply to non-listed corporate entities and trusts. We also note, and broadly support, the criteria to determine what is beneficial ownership, including the proposed 20% threshold.

Our members are mutual ADIs and as such they are non-listed entities but due to their mutual structure providing 'one member one vote' ownership it would not be possible for any single person to exercise the methods of control or ownership in the proposed criteria to determine beneficial ownership. Based on this we do not see our members being subject to the obligations to create the privately held registers or to report to the proposed centralised register.

We believe this approach is correct and that it is not appropriate to include mutual ADIs in the beneficial ownership register regime. COBA opposes any changes or expansion to the beneficial ownership criteria that would have the effect of making our members subject to these obligations. Our members are not multinational businesses and nor do they use opaque business models to minimise

tax or to hide who are the owners of the business. Our members are proudly owned by each of their customers and are subject to democratic 'one member one vote' control by these customers.

Additionally, our members collect personal information on each customer as is required by law. This information is subject to the protections contained in the privacy laws and any release of our members' customer information through a beneficial ownership register could damage the ability of our members to compete against the listed banks. The customers of the listed banks cannot be listed on this proposed register as they do not own their bank but if the regime were extended to include our members, then all or many of their customers would be required to be listed. This disclosure of our members' customers would likely cause uncertainty and concern and could cause damage to the mutual ADI brand compared to the listed banks.

COBA strongly opposes mutuals being included in the register for reasons already stated but should Treasury consider expanding the beneficial ownership criteria to include mutual ADIs, then we would request further direct engagement with Treasury on this issue.

Anti-money laundering impacts

COBA asks Treasury to provide more detail on what its medium to long term intentions are with the register regarding anti-money laundering (AML). The Consultation Paper makes repeated references to the proposed register's role in AML, including references to international recommendations to combat AML, but it is unclear what this will mean for ADIs. We would like to know what, if any, future regulatory obligations could be placed on our members once the register is created.

Our members have expressed concern that, while they may not be subject to the reporting obligations of the register, it could be used to pave the way for significant new AML obligations and accompanying compliance costs. The Consultation Paper is not clear on what, if any, impacts will occur for ADIs through the creation of this register, including any increased obligations on collecting, transmitting, and storing personal data. It is unclear what information our members would need to check on the register, what information they may be required to collect and hold, or whether there will be any obligations imposed on them at all.

We would like to better understand if and how the beneficial ownership register could be used or become part of our members' AML account opening and complex accounts checks and whether it would go beyond our members' existing obligations on AML. It is not clear, once the register is created, what will be considered the minimum necessary steps for our members interacting with the register for AML purposes. This includes what level of confidence our members need to have in the information before relying on it and who would be held liable for mutual ADIs relying on incorrect information in the register.

Further, it is unclear how this process for checking the register will be different for our members compared to the current AML data collection requirements as provided by AUSTRAC. It is not clear whether the existing AML programs and operating practices will be sufficient to accommodate the collection of beneficial owner information or whether further steps will be required.

Phased implementation of the register and associated costs

We understand the reasons for the proposed phased implementation of the register and recognise that it is the most prudent option for making such a large change. However, we are concerned about the potential costs of the register on our members plus the difficulties and costs that checking the privately held beneficial ownership registers could cause our members for their AML obligations.

Until the centralised register is created it is likely to be difficult for our members to have access to and confidence in the information contained in the private registers. Our members have expressed concern about the availability of reliable and independent information from these privately held registers. We also have concerns on the potential flow on costs of establishing the register could have on our members and the potential need for members to upgrade their programs to:

- Create the ability to capture and report additional data either to report to the register or to prove that they have used the register, and
- Ongoing costs and allocation of resources to prepare and provide any reporting arising from the creation of the register.

We recommend that Treasury consider these impacts, costs, and obligations as part of its timeline to transitioning to the central register. We recognise that Treasury needs to allow sufficient time for affected entities to comply, but we ask that Treasury not unduly drag out the implementation period such that it adversely inconveniences our members.

We welcome the opportunity to continue working with Treasury on this project and future opportunities to provide feedback.

Thank you for the opportunity to respond to this Consultation Paper. If you wish to discuss any aspect of this submission, please contact Robert Thomas (RThomas@coba.asn.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Lawrence', with a stylized flourish at the end.

MICHAEL LAWRENCE
Chief Executive Officer

Attachment A – COBA responses to Consultation Paper Questions

No.	Question	COBA Response
7	Should the requirement to maintain a beneficial ownership register be applied to any other entities or legal vehicles (noting beneficial ownership requirements for property not including regulated entities held on trust will be subject to a separate consultation process)?	<p><u>Mutual ADIs</u> COBA does not support extending the beneficial ownership register to include mutual ADIs.</p> <p>Our members' mutual model means that their owners are their customers and operate on a 'one member one vote' principle. This means that members are democratically governed with no single customer, no matter the size of their bank account or loans, generally unable to exercise more ownership or control of the bank than any other customer.</p>
8	Should some entities, such as certain not-for-profit entities, have bespoke or limited beneficial ownership register requirements? If so, what types of entities, and what relief from the general disclosure requirements should be provided?	<p><u>Incorporated associations</u> Treasury could consider extending the regime to incorporated associations if jurisdiction allows. Some associations can be opaque in their operations and ownership, and it could help bring greater transparency on these organisations.</p>
10	What, issues, if any, may arise with the proposed recording requirements?	<p>It could be difficult for a regulated entity to comply with the register obligations especially in complicated arrangements. For example, it may not be clear to regulated entities on how to obtain the necessary granular detail, especially for smaller family-run entities.</p> <p>For example, the details suggested by Figure 4.3 would require access to two trust deeds (Trust 1 and Trust 2) to determine who is the beneficial owner. These may not be forthcoming from the holders of the deeds and the arrangements can become very convoluted as the number of trusts increases, especially if it involves more than one or two trusts.</p> <p>For smaller regulated entities the amount of work to determine who the beneficial owner is could be greater than any purported benefit gained from the register. In some instances, it could be very costly to determine who the beneficial owner is considering the complexity that can exist in some corporate structures and trust arrangements.</p>
11	Should regulated entities have bespoke disclosure requirements with respect to discretionary trusts listed on their beneficial ownership registers? If so, what information should be disclosed?	<p>Discretionary trusts (especially family trusts) can have a very significant number of potential beneficiaries able to receive distributions. For example, the parents or grandparents of the named beneficiaries are often listed in the deed as beneficiaries and able to receive distributions but do not in practice receive distributions. For this reason and for the purposes of the register it does not necessarily seem appropriate to deem all beneficiaries as the beneficial owner just because there is the potential that they could receive 100% of the distributions, as occurs in state payroll</p>

		<p>tax grouping decisions (e.g., <i>Payroll Tax 2007</i> (NSW), s 72(2)(g), (5), (6)). If each beneficiary is deemed as having a beneficial ownership this could see dozens of people listed as the owner of a trust when in reality it is more likely to be only a small number of persons. This not only would breach the privacy of all of the potential beneficiaries but would also obscure who the true beneficial owner is.</p> <p>An alternative would be for the reporting of who the distributions have been made to over the last three or so years including the percentages of the distributions received. This could provide a better indication of who the real beneficial owners of the trust are. For example, John and Sarah and their eldest child Samantha receive equal distributions from a family trust but John and Sarah's younger children, Alex and James, receive no distributions. In this example, John, Sarah and Samantha are each receiving a third of distributions so should be listed as beneficial owners, while Alex and James are not listed as they did not receive any distributions despite their potential to receive them under the deed.</p> <p>However, the main risk with this proposal is that it would not be full proof as discretionary trust distributions are often made to multiple people at an amount below the income tax threshold so as to minimise the collection of income tax. In these situations, the funds are then usually paid by the family into another vehicle, such as a family SMSF, to retain control of the funds. To help mitigate this, the named beneficiaries of the trust could always be included regardless of the amount of distributions they actually receive as they are likely to be the real beneficial owners of the discretionary trust.</p>
12	How should public access of regulated entities' registers be facilitated? Should registers be accessible on request or published on the regulated entities' websites?	<p>The register should only be accessible, perhaps on request, to those who would normally require access to the register for verification of beneficial ownership, i.e., AUSTRAC reporting entities and Government Departments.</p> <p>When establishing the centralised register consideration could be given to information being only available for a fee. The fee to search the ASIC Company Register helps to ensure that it is only searched when it is necessary to do so.</p>
13	What other information should be collected on the beneficial ownership register?	<ul style="list-style-type: none"> • Entity establishment date (which could be different to registration date). • Jurisdiction (noting some entities are regulated under state law and are established in a particular state i.e., associations, trusts).

14	Should any of the proposed beneficial ownership information not be collected?	COBA's preference as a starting point is for the information collected to be a similar level as required by the Company Register. However, we have no objections to those listed in the Consultation Paper.
15	What key risks, if any (including privacy risks), are associated with making the proposed information available to the public? How can these risks be mitigated?	The main risk is that information that is made available for the verification of a business entity beneficial ownership could be used for other purposes including scams and fraud.
16	Are there any potential unintended consequences which could result from adopting the proposed approach to protect some beneficial owners' information from public disclosure?	COBA generally supports the approach suggested in the Consultation Paper to protect personal information. We support a graduated basis of exemptions being granted to ensure only limited information is made publicly available while the remaining information is withheld and only made available in certain instances.
17	In what other circumstances should beneficial ownership information be protected from disclosure? What should be the scope of the protection in those circumstances?	In light of recent high-profile data breaches, we would also recommend Treasury examine what further steps are necessary to ensure the protection of personal information, including limiting the information that those entities needing to use the register (e.g., ADIs for AML purposes) need to hold to satisfy their obligations. This is especially the case with the privately held registers of smaller entities. These entities do not necessarily have the capacity and ability to protect the information from a sophisticated cyber-attack.
18	Should disclosure exemptions be granted on a graduated basis, so in each case, only the specific details on the register that would put a person's personal safety at risk are exempt from disclosure (e.g. a beneficial owner's name may still be publicly accessible while other identifying information about the owner on the register may be exempt)?	<p>We would also recommend that a mechanism be put in place to ensure that the more detailed personal information can be accessed on request by those parties needing the information for verification purposes. If mandatory obligations are imposed on our members to use these registers as part of AML there would need to be the ability for our members to check this information or to have a trusted third-party identity verification system to verify the information and confirm to the bank who the beneficial owner is, and that the person is who they say they are. In addition, there would need to be protections for our members where a person refuses or withholds information, so they are unable to verify the beneficial ownership.</p> <p>This is different to the process shown in Figure 6.1 as it shows the regulated entity verifying the identity of the beneficial owner. What COBA is proposing here is a mechanism to allow another entity (e.g., a mutual ADI) requesting access to the beneficial ownership register of a regulated entity with the identifying information shared with the mutual ADI or identity on the register shared with an identity verification service provider.</p>

19	Are there any potential unintended consequences which could result from requiring regulated entities to be reasonably assured of the identities of their beneficial owners? How could these be addressed?	This could be difficult to enforce despite the enforcement measures provided in the Consultation Paper. It depends on what is necessary to meet the standard 'reasonably assured' and what steps the verifying entity would need to take.
26	What regulatory and compliance costs are already incurred by regulated entities to collect, verify, and maintain beneficial ownership information under existing regimes including member register and anti-money laundering and counter terrorism financing obligations?	There are potential costs of setting up the system and for our members to upgrade their programs to: <ul style="list-style-type: none"> • Create an ability to capture and report any additional data. • Ongoing costs and resources to monitor and provide reporting on the additional volume created by the register.
27	What additional financial costs would regulated entities or listed entities incur to comply with the proposals in this paper? Which entities would be affected and what would be the quantified estimate of regulatory burden incurred?	The Paper does not adequately outline the potential future regulatory and compliance impact the register could have on AML obligations: <ul style="list-style-type: none"> • What impact will the register have on ADIs to increase collection, transmission, and storage of personal information? • What information, if any, will need to be collected by ADIs and to what extent? • Will there be new rules required outside existing AML monitoring requirements, and if so, what are these rules? • How will this process be different from current AML data collection requirements provided by AUSTRAC? • Will existing AML programs and operating practices of ADIs be sufficient to accommodate the collection of beneficial owners' information?
29	What other information is relevant to assessing the costs and benefits and regulatory burden of introducing the proposals outlined in this paper?	A potential benefit of the future centralised beneficial ownership register is that it should be straightforward for our members to check for verification purposes. Until such time the dispersed private registers will likely add to and increase compliance costs for members who need to undertake AML verifications. The creation of the register could be used to justify the creation of new future regulations and compliance burdens on our members as the AML verification processes are increased.